

JUDICIAL COUNCIL OF THE SIXTH CIRCUIT
MICHIGAN-OHIO-KENTUCKY-TENNESSEE

In re:
Complaint of Judicial Misconduct

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*No. 06-18-90012
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MEMORANDUM AND ORDER

This complaint of judicial misconduct was filed by **[REDACTED]** (“complainant”) against the Honorable **[REDACTED]** (“subject judge”), pursuant to 28 U.S.C. § 351. The complaint alleges that the subject judge has delayed ruling on a 28 U.S.C. § 2255 motion to vacate that the complainant filed in 2016.

After conducting an initial review, the chief judge may dismiss a misconduct complaint as to which he concludes: (A) that the claimed conduct, even if it occurred, “is not prejudicial to the effective and expeditious administration of the business of the courts”; (B) that the complaint “is directly related to the merits of a decision or procedural ruling”; (C) that the complaint is “frivolous,” a term that applies to charges that are wholly unsupported; or (D) that the complaint “lack[s] sufficient evidence to raise an inference that misconduct has occurred.” Rule 11(c)(1)(A)-(D), Rules for Judicial-Conduct and Judicial-Disability Proceedings; see 28 U.S.C. § 352(a), (b).

An initial review of the record reveals that the complainant filed a § 2255 motion in September of 2016. The government filed a response in November of 2016. The originally assigned district judge retired in January of 2017, and the case was reassigned to the subject judge. In March of 2018, after the filing of this misconduct complaint, the subject judge denied the complainant’s § 2255 motion.

An allegation of delay in rendering a decision does not allege cognizable misconduct unless the allegation concerns an improper motive on the part of the subject judge or habitual delay in a significant number of cases. Rule 3(h)(3)(B), Rules for Judicial-Conduct and Judicial-Disability Proceedings. The complainant does not allege an improper motive or habitual delay. The complaint is thus subject to dismissal under Rule 11(c)(1)(A) as not alleging cognizable misconduct. See *a/so* 28 U.S.C. § 352(b)(1)(A)(iii). In any event, the subject judge has rendered the complaint moot by ruling on the complainant’s § 2255 motion. See 28 U.S.C. § 352(b)(2) (providing that

the chief judge may conclude a misconduct proceeding if “action on the complaint is no longer necessary because of intervening events”).

Accordingly, it is **ORDERED** that the complaint be dismissed pursuant to 28 U.S.C. § 352(b)(2) and Rule 11(c)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

/s/ R. Guy Cole, Jr.
Chief Judge

Date: September 10, 2018